

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RICHARD SCOTT,

Plaintiff,

V.

KELLY J. CUNNINGHAM,

Defendant.

No. C11-5509 BHS/KLS

**ORDER DENYING PLAINTIFF'S  
MOTION TO APPOINT COUNSEL**

This civil rights action has been referred to United States Magistrate Judge Karen L.

Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is Plaintiff's motion for the appointment of counsel. ECF No. 11. Having carefully reviewed Plaintiff's motion, Defendant's opposition (ECF Nos. 14-17), and balance of the record, the Court finds, for the reasons stated below, that Plaintiff's motion should be denied.

## DISCUSSION

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). See also *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), overruled on other grounds, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional circumstances exist, the court must evaluate both “the likelihood of success on the merits [and] the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal

1 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting  
2 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he  
3 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
4 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
5 1101, 1103 (9<sup>th</sup> Cir. 2004).

6 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
7 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues  
8 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further  
9 facts during litigation. But, if all that was required to establish the complexity of the relevant  
10 issues was a demonstration of the need for development of further facts, then practically all cases  
11 would involve complex legal issues. *Id.*

12 Plaintiff states that he requires the appointment of counsel because this is a complex case,  
13 discovery is impossible due to his incarceration, and the issues raised will require a special  
14 master or investigator. ECF No. 11, p. 2. Plaintiff filed his complaint *pro se* and has  
15 demonstrated an adequate ability to articulate his claims *pro se*. Plaintiff has a long history of  
16 litigation in this district and is the subject of case management orders because of abusive  
17 litigation tactics. The Court is managing this case pursuant to those orders. ECF No. 4; and *Scott*  
18 *v. Seling*, C04-5147 RJB, ECF. Nos. 152 and 170 ¶ 9. In this case, Plaintiff raises claims relating  
19 to the conditions of his confinement at the SCC, which he alleges have deteriorated to the point  
20 of violating the constitution. ECF No. 2. He asserts that the causes of the “deterioration” are  
21 budget cuts and that the Department of Corrections (DOC) vacated the McNeil Island in April  
22 2011, which he speculates must mean staff to maintain the island’s infrastructure no longer exist.  
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1 *Id.* Specifically, Mr. Scott complains of the lack of medical care, emergency services and court  
2 access. *Id.* This case does not involve complex facts or law.

3 The Court finds no exceptional circumstances in this case. While Plaintiff may not have  
4 vast resources or legal training, he meets the threshold for a *pro se* litigant. Concerns regarding  
5 investigation and discovery are also not exceptional factors, but are the type of difficulties  
6 encountered by many *pro se* litigants. There are also numerous avenues of discovery available to  
7 the parties through the Federal Rules of Civil Procedure during the litigation process.  
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9 Moreover, Plaintiff has not shown a likelihood of success on the merits.

10 Accordingly, Plaintiff's motion to appoint counsel (ECF No. 11) is **DENIED**. The Clerk  
11 is directed to send copies of this Order to Plaintiff.  
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13 **DATED** this 21st day of September, 2011.

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16 Karen L. Strombom  
17 United States Magistrate Judge  
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